

**R K PRODUCTION COMPANY**

2626 Glenchester Road  
Wexford, Pennsylvania 15090  
412-934-1892

December 5, 1996

The Honorable Rick Santorum  
U.S. Senate  
120 Russell Senate Office Building  
Washington, D.C. 20510

Dear Senator Santorum:

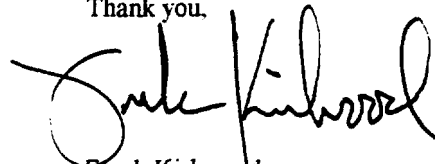
As an independent television programmer, I am very angry about the Federal Communications Commission's four year delay in implementing the leased access provisions of the 1992 Cable Act. These laws were intended to ensure that companies like mine, which are not financially affiliated with the enormous cable companies that control cable system access, would have reasonable opportunities for local cable system carriage. The FCC's lengthy delay in implementing Congress's mandate has been extraordinarily harmful to programmers like mine, as well as to the audiences we are trying to serve.

The 1992 leased access provisions - which notably were not repealed in the 1996 Telecommunications Act - were one of Congress's many responses to the increased concentration among cable system operators and the increased vertical integration between system operators and programmers. Having witnessed excessive cable company discrimination against programmers that did not have industry financial participation, Congress directed the FCC to develop regulations that would provide a realistic opportunity for unaffiliated programmers to crack the industry oligopoly and gain access to the viewing public. Unfortunately, in four years the FCC has yet to effectively implement Congress's mandate, while in the interim the integrated cable companies are engaged in a consistent industry-wide pattern of either flat-out denying access to independent programmers or offering access only under conditions which make it impossible for independent programmers to succeed. These conditions often include prices for cable time that are so high that no independent programmer can make a business work.

In addition to endless delay in developing effective regulations, the FCC has dragged its feet in dealing with complaints from leased access programmers. My company has been waiting more than seven months for rulings on complaints it has filed. Some programmers have waited much, much longer. It is impossible for a leased access programmer to do business in an environment where cable companies can behave illegally without fear of FCC action and where the FCC can nullify an Act of Congress by not making an honest effort to implement it.

I request your assistance in persuading the FCC to follow Congress's instructions on this issue.

Thank you.

A handwritten signature in black ink, appearing to read "Frank Kirkwood", written in a cursive style.

Frank Kirkwood  
President

---

R K PRODUCTION COMPANY

2626 Glencaster Road  
Wexford, Pennsylvania 15090  
412-934-1892

December 5, 1996

The Honorable Arlen Specter  
U.S. Senate  
530 Hart Senate Office Building  
Washington, D.C. 20510

Dear Senator Specter:

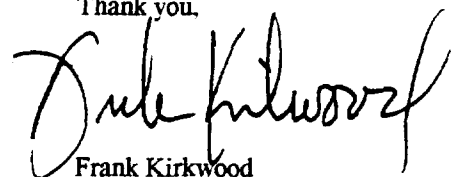
As an independent television programmer, I am very angry about the Federal Communications Commission's four year delay in implementing the leased access provisions of the 1992 Cable Act. These laws were intended to ensure that companies like mine, which are not financially affiliated with the enormous cable companies that control cable system access, would have reasonable opportunities for local cable system carriage. The FCC's lengthy delay in implementing Congress's mandate has been extraordinarily harmful to programmers like mine, as well as to the audiences we are trying to serve.

The 1992 leased access provisions - which notably were not repealed in the 1996 Telecommunications Act - were one of Congress's many responses to the increased concentration among cable system operators and the increased vertical integration between system operators and programmers. Having witnessed excessive cable company discrimination against programmers that did not have industry financial participation, Congress directed the FCC to develop regulations that would provide a realistic opportunity for unaffiliated programmers to crack the industry oligopoly and gain access to the viewing public. Unfortunately, in four years the FCC has yet to effectively implement Congress's mandate, while in the interim the integrated cable companies are engaged in a consistent industry-wide pattern of either flat-out denying access to independent programmers or offering access only under conditions which make it impossible for independent programmers to succeed. These conditions often include prices for cable time that are so high that no independent programmer can make a business work.

In addition to endless delay in developing effective regulations, the FCC has dragged its feet in dealing with complaints from leased access programmers. My company has been waiting more than seven months for rulings on complaints it has filed. Some programmers have waited much, much longer. It is impossible for a leased access programmer to do business in an environment where cable companies can behave illegally without fear of FCC action and where the FCC can nullify an Act of Congress by not making an honest effort to implement it.

I request your assistance in persuading the FCC to follow Congress's instructions on this issue.

Thank you.



Frank Kirkwood  
President

**R K PRODUCTION COMPANY**

2626 Glenchester Road  
Wexford, Pennsylvania 15090  
412-934-1892

December 5, 1996

The Honorable Ron Klink  
U.S. House of Representatives  
125 Cannon House Office Building  
Washington, D.C. 20515

Dear Congressman Klink:

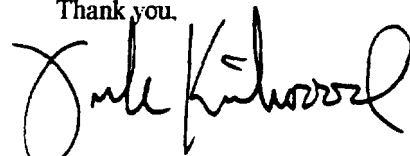
As an independent television programmer, I am very angry about the Federal Communications Commission's four year delay in implementing the leased access provisions of the 1992 Cable Act. These laws were intended to ensure that companies like mine, which are not financially affiliated with the enormous cable companies that control cable system access, would have reasonable opportunities for local cable system carriage. The FCC's lengthy delay in implementing Congress's mandate has been extraordinarily harmful to programmers like mine, as well as to the audiences we are trying to serve.

The 1992 leased access provisions - which notably were not repealed in the 1996 Telecommunications Act - were one of Congress's many responses to the increased concentration among cable system operators and the increased vertical integration between system operators and programmers. Having witnessed excessive cable company discrimination against programmers that did not have industry financial participation, Congress directed the FCC to develop regulations that would provide a realistic opportunity for unaffiliated programmers to crack the industry oligopoly and gain access to the viewing public. Unfortunately, in four years the FCC has yet to effectively implement Congress's mandate, while in the interim the integrated cable companies are engaged in a consistent industry-wide pattern of either flat-out denying access to independent programmers or offering access only under conditions which make it impossible for independent programmers to succeed. These conditions often include prices for cable time that are so high that no independent programmer can make a business work.

In addition to endless delay in developing effective regulations, the FCC has dragged its feet in dealing with complaints from leased access programmers. My company has been waiting more that seven mopths for rulings on complaints it has filed. Some programmers have waited much, much longer. It is impossible for a leased access programmer to do business in an environment where cable companies can behave illegally without fear of FCC action and where the FCC can nullify an Act of Congress by not making an honest effort to implement it.

I request your assistance in persuading the FCC to follow Congress's instructions on this issue.

Thank you.



Frank Kirkwood  
President

**R K PRODUCTION COMPANY**

2626 Glenchester Road  
Wexford, Pennsylvania 15090  
412-934-1892

December 5, 1996

The Honorable Clarence Irving, Jr.  
Assistant Secretary for Communications and Information  
U. S. Department of Commerce  
14th Street and Constitution Avenue, N.W.  
Room 4898  
Washington, D.C. 20230

Dear Mr. Secretary:

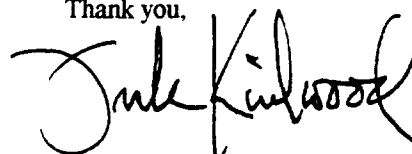
As an independent television programmer, I am very angry about the Federal Communications Commission's four year delay in implementing the leased access provisions of the 1992 Cable Act. These laws were intended to ensure that companies like mine, which are not financially affiliated with the enormous cable companies that control cable system access, would have reasonable opportunities for local cable system carriage. The FCC's lengthy delay in implementing Congress's mandate has been extraordinarily harmful to programmers like mine, as well as to the audiences we are trying to serve.

The 1992 leased access provisions - which notably were not repealed in the 1996 Telecommunications Act - were one of Congress's many responses to the increased concentration among cable system operators and the increased vertical integration between system operators and programmers. Having witnessed excessive cable company discrimination against programmers that did not have industry financial participation, Congress directed the FCC to develop regulations that would provide a realistic opportunity for unaffiliated programmers to crack the industry oligopoly and gain access to the viewing public. Unfortunately, in four years the FCC has yet to effectively implement Congress's mandate, while in the interim the integrated cable companies are engaged in a consistent industry-wide pattern of either flat-out denying access to independent programmers or offering access only under conditions which make it impossible for independent programmers to succeed. These conditions often include prices for cable time that are so high that no independent programmer can make a business work.

In addition to endless delay in developing effective regulations, the FCC has dragged its feet in dealing with complaints from leased access programmers. My company has been waiting more than seven months for rulings on complaints it has filed. Some programmers have waited much, much longer. It is impossible for a leased access programmer to do business in an environment where cable companies can behave illegally without fear of FCC action and where the FCC can nullify an Act of Congress by not making an honest effort to implement it.

I request your assistance in persuading the FCC to follow Congress's instructions on this issue.

Thank you,



Frank Kirkwood  
President

---

R K PRODUCTION COMPANY

2626 Glenchester Road  
Wexford, Pennsylvania 15090  
412-934-1892

December 5, 1996

The Honorable Al Gore  
Vice President  
Old Executive Office Building  
Washington, D.C. 20501

Dear Mr. Vice President:

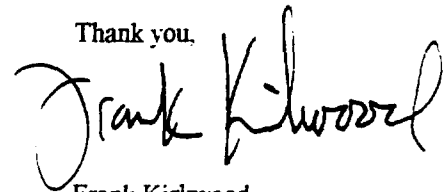
As an independent television programmer, I am very angry about the Federal Communications Commission's four year delay in implementing the leased access provisions of the 1992 Cable Act. These laws were intended to ensure that companies like mine, which are not financially affiliated with the enormous cable companies that control cable system access, would have reasonable opportunities for local cable system carriage. The FCC's lengthy delay in implementing Congress's mandate has been extraordinarily harmful to programmers like mine, as well as to the audiences we are trying to serve.

The 1992 leased access provisions - which notably were not repealed in the 1996 Telecommunications Act - were one of Congress's many responses to the increased concentration among cable system operators and the increased vertical integration between system operators and programmers. Having witnessed excessive cable company discrimination against programmers that did not have industry financial participation, Congress directed the FCC to develop regulations that would provide a realistic opportunity for unaffiliated programmers to crack the industry oligopoly and gain access to the viewing public. Unfortunately, in four years the FCC has yet to effectively implement Congress's mandate, while in the interim the integrated cable companies are engaged in a consistent industry-wide pattern of either flat-out denying access to independent programmers or offering access only under conditions which make it impossible for independent programmers to succeed. These conditions often include prices for cable time that are so high that no independent programmer can make a business work.

In addition to endless delay in developing effective regulations, the FCC has dragged its feet in dealing with complaints from leased access programmers. My company has been waiting more than seven months for rulings on complaints it has filed. Some programmers have waited much, much longer. It is impossible for a leased access programmer to do business in an environment where cable companies can behave illegally without fear of FCC action and where the FCC can nullify an Act of Congress by not making an honest effort to implement it.

I request your assistance in persuading the FCC to follow Congress's instructions on this issue.

Thank you,



Frank Kirkwood  
President

# TV8 ADIRONDACK TELEVISION CORPORATION

22 Nov 96

The Honorable Clarence (Larry) Irving, Jr.  
Assistant Secretary for Communications and Information  
U.S. Department of Commerce  
14th Street & Constitution Avenue, N.W.  
Room 4898  
Washington, D.C. 20230

Dear Mr. Secretary:

For several months, I have worked with our industry organization, Community Broadcasters Association, and with individual broadcasters to stimulate the Federal Communications Commission to act, as mandated by the Congress, *in implementing the leased access provisions of the 1992 Cable Act*. All to no avail.

Four years ago, along with Congressman Markey and Vice President Gore, you led the successful campaign to enact the Cable Television Consumer Protection and Competition Act of 1992. Ever since, hundreds of independent television programmers and broadcasters have anxiously anticipated implementation of the Act's leased access provisions, which were intended to ensure that the vertically and horizontally integrated cable television operators could not exploit their controlling position to monopolize the programming that could be received by cable consumers.

Today, four years later, it is simply a fact that, across this country and certainly throughout New York State, small broadcasters very much like TV8 are angry at *the FCC's four-year stonewall* in formulating and implementing fair pricing and fair access formulas for leased cable space. The FCC's implementation and oversight of leased access has been shameful, and the cable companies are treating leased access programmers at least as badly today as they did in 1992. This is partly due to the inept regulations approved by the FCC, which have harmed the very people -- independent programmers, broadcasters, and consumers -- that they were intended to assist. This entire leased access exercise has been a charade, with the only winners being the cable companies.

TV8 is lucky (for the moment) in that it has good cable carriage; however, with the unpredictability and turbulence of the telecommunications industry, there is no guarantee

that will continue -- in which case, leased access will be TV8's only salvation. But aside from TV8, I know that here in the North Country a number of small television producers get whip-sawed by the unpredictable and ever-changing pricing and demands of local cable systems. Similarly, the ownership of TV8, itself, contemplates the creation of a regional, community network for the North Country -- a plan rendered futile unless leased access becomes available and financially fair to serve our communities, as contemplated by Congress.

The 1992 Cable Act was intended to insure that local and regional producers like those in the North Country (who are not financially affiliated with the enormous cable companies that control cable system access) would have reasonable opportunities for local cable system carriage. The FCC's lengthy delay in implementing Congress's mandate has been extraordinarily harmful to, and effectively prohibited development of, our regional producers of local programming.

The ultimate losers, of course, are our North Country audiences who want to see, and would benefit from local and regional programming. Absolute proof of that is the audience for our own local show, *Senior Scene*. It appears that *Senior Scene* is #1 when it is live at 11:00 a.m. and ranks #4 or #5 among our 35 channels (and against the national networks) when it reruns at 8:00 p.m., daily. Notably, and shamefully, there is no television program on the networks that serves the news, services, and information needs of the huge and crucially important demographic of seniors. Only *Senior Scene* serves this vitally important function in the North Country.

Mr. Secretary, the information superhighway will remain a fantasy if its entrance ramps are impenetrable and its tollbooths are anti-competitive. The current leased access situation harms consumers and the entrepreneurs who are trying to reach them, *and it must be changed immediately*

I urge you to communicate to the FCC that its mandate is to promulgate leased access regulations that effectuate a genuine outlet for independent programmers and broadcasters.

Please allow us to assist you in any way we can.

Best regards,

A handwritten signature in black ink, appearing to read "Charles F. Adams", with a large, sweeping flourish extending to the left.

Charles F. Adams  
President

4031 West 61st Street  
Los Angeles, California 90043  
(213) 292-4469  
(213) 292-1362 FAX

---

November 23, 1996

The Honorable Al Gore  
Vice President  
Old Executive Building  
Washington, D.C. 20501

Re: Leased Access Cable Television

Dear Mr. Vice President:

First and foremost, I would like offer my congratulations to you and the president for your re-election to another four-year term. I especially applaud your "bridge into the twenty-first century" a goal of which I am certain that you will help to develop.

Four years ago, as a member of the United States Senate, you led the victorious effort to enact the Cable Television Consumer Protection and Competition Act of 1992. The specific part of that act of which I am concerned has to do leased access, which gives local television producers the opportunity to air their programs. Here is what leased access means to me.

As a local television producer, I can create my own television show, and then go to a small local business to sell advertisement time to pay for my production cost and air time. In this scenario everybody wins. The small business wins because it can have its commercials aired without having to pay an arm and leg. I win because I can have my programs aired without having to mortgage my home to pay for the air time, and finally, the viewers win because they get the opportunity to view programming that was not decided by lawyers and accountants<sup>1</sup>.

I have heard our president say that "diversity is our greatest asset" and I think the leased accessed cable television plays a significant role in perpetuating such diversity, by creating an environment where diverse ideas can be aired over local cable networks.

---

<sup>1</sup> As long as commercial television is controlled by ratings, which determine how much the advertisers pay for 30 second commercial, then accountants and lawyers will determine what you and I will be watching on television. In 1992 congress recognized this and sought to remedy this problem with the leased access provision of the 1992 Cable Act.



Unfortunately Mr. Vice President, I cannot say that the FCC has complied with the spirit of the 1992 Cable Act as it relates to promulgating rules and regulations for leased access. It turns out that the large cable companies do not like leased access television because it cuts into the time available for the large cable operators. They would rather offer an hour of time to HBO rather than to make that time available to low cost productions like mine. Because of the remote control device, both productions have an equal chance at that cable viewer, who will be more inclined to watch a show that holds the interest regardless as to the cost of production.

To frustrate the spirit of the law, these large cable operators have used an assortment of tactics to discourage leased accessed producers. These tactics include:

- Setting prices for air time so high, that local producers cannot be competitive.
- Offering air times to local producers when there are few or no viewers.
- Demanding product liability insurance for infomercials
- Failing to maintain the equipment used to air leased access shows that results in poor quality telecasts that turns away potential viewers.
- Demanding that local producers obligate themselves and pay for 13 shows in advance. This policy eliminates the opportunity to air one show just to test the appeal to the audience.

As I understand, the FCC is close to promulgating new rules that will affect cable television and leased access, and I am appealing to you to encourage them to do so, so to provide for more fairness and greater opportunities for leased access producers like myself. I would specifically like to see a reduction in the price for air time, and for more opportunities available to air my shows.

Thank you for your assistance.

  
Your truly,

Rudolph L. Dyson  
President



*A Lorlei Communications, Inc. Company*

11/20/96

The Honorable Clarence Irving, Jr.  
Assistant Secretary for Communications and Information  
U.S. Department of Commerce  
14th Street and Constitution Ave., N.W.  
Washington, D.C. 20230

Dear Mr. Secretary:

Four years ago you, along with Congressman Markey and Vice President Gore, led the victorious effort to enact the Cable Television Consumer Protection and Competition Act of 1992. Ever since, hundreds of independent television programmers have anxiously anticipated implementation of the Act's leased access provisions, which were intended to ensure that the vertically and horizontally integrated cable television operators could not exploit their controlling position to monopolize the programming that could be received by cable consumers.

Unfortunately, the FCC's implementation and oversight of leased access has been shameful, and the cable companies are treating leased access programmers even worse today than they did in 1992. This is partly due to the inept regulations approved by the FCC, which have harmed the very people - independent programmers and consumers - that they were intended to assist. Frankly, this entire leased access exercise has been a charade, with the only winners being the cable companies.

Mr. Secretary, the information superhighway will remain a fantasy if its entrance ramps are impenetrable and its tollbooths are anticompetitive. The current leased access situation harms consumers and the entrepreneurs who are trying to reach them, and must be changed immediately.

We urge you to communicate to the FCC that its mandate is to promulgate leased access regulations that effectuate a genuine outlet for independent programmers.

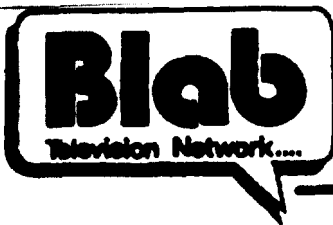
Thank you for your consideration and your interest.

Sincerely,

A handwritten signature in dark ink, appearing to read "Gerry Cunningham".

Gerry Cunningham, President  
Lorlei Communications, Inc. dba THE FIRM

**P.O. Box 309 Citra, FL 32113**  
**(888) THE-FIRM (800) 479-FIRM Local (352) 595-3000 Fax (352) 595-3008**  
**<http://www.callthefirm.com> e-mail - [thefirm@mercury.net](mailto:thefirm@mercury.net)**



TV you can talk back to.

The Honorable Joe Scarborough  
U.S. House of Representatives  
Fax (202) 225-4314

Dear Joe:

As the President of Blab TV I am getting increasingly angry with regard to the FCC's FOUR-YEAR DELAY in implementing the leased accessed provisions of the 1992 Cable Act. These laws were passed to ensure that small operations like mine, who have no affiliation with the enormous cable companies that control access, would have a reasonable opportunity for local cable carriage. The FCC's lengthy delay in implementing Congress's mandate has been extraordinarily harmful to local programmers such as myself, as well as to the audiences we are trying to serve.

The point of the above paragraph is dramatically driven home when you realize that Blab TV between 1984 and 1988 began programming in Pensacola FL., Mobile AL., New Orleans LA., Richmond VA., St Petersburg/Clearwater FL., and Sarasota FL. Since that time we have attempted no new expansions because of cable rates.

The 1992 leased access provisions - which notable were not repealed in the 1996 Telecommunications Act -- were one of Congress's many responses to the increased vertical integration between system operators and programmers. Having witnessed excessive cable company discrimination against programmers that did not have industry financial participation, Congress directed the FCC to develop regulations that would provide a realistic opportunity for unaffiliated programmers to crack the industry oligopoly and gain access to the viewing public. Unfortunately, in four years the FCC has yet to effectively implement Congress's mandate, while in the interim the integrated cable companies are charging outrageous rates for access when they are providing it at all.

Please let me know who in your office will assist in persuading the FCC to follow Congress's instructions on this issue.

Sincerely,

A handwritten signature in cursive script, appearing to read "Fred", is written above the printed name.

Fred Vigodsky

FCC Licensee  
KB1GH-LP, San Diego  
397 Canyon Ridge Drive  
Bonita CA 91902

Telephone 619-421-4208  
Fax 619-421-4208

The Honorable Clarence (Larry) Irving, Jr.  
Assistant Secretary for Communications and Information  
U.S. Department of Commerce  
14th Street and Constitution Avenue, N.W.  
Room 4898  
Washington, D.C. 20230

November 27, 1996

Dear Mr. Secretary:

Four years ago you, along with Congressman Markey and Vice President Gore, led the victorious effort to enact the Cable Television Consumer Protection and Competition Act of 1992. Ever since, hundreds of independent television programmers have anxiously anticipated implementation of the Act's leased access provisions, which were intended to ensure that the vertically and horizontally integrated cable television operators could not exploit their controlling position to monopolize the programming that could be received by cable consumers.

Unfortunately, the FCC's implementation and oversight of leased access has been shameful, and the cable companies are treating leased access programmers even worse today than they did in 1992. This is partly due to the inept regulations approved by the FCC, which have harmed the very people - independent programmers and consumers - that they were intended to assist. Frankly, this entire lease access exercise has been a charade, with the only winners being the cable companies.

Mr. Secretary, the information superhighway will remain a fantasy if its entrance ramps are impenetrable and its tollbooths are anticompetitive. The current lease access situation harms consumers and the entrepreneurs who are trying to reach them, and must be changed immediately.

In our particular situation in San Diego leased access costs a minimum of \$ 40,000 per month. Cox Cable have increased rates last November 15, 1996 and Southwestern cable followed suit. There is almost no minority representation for Asian-Americans here in San Diego because of the prohibitive cost of leased access to independent community programmers like ourselves.

**Robert F. Posadas**

FCC Licensee  
K61GH-LP, San Diego  
387 Canyon Ridge Drive  
Bonita CA 91902

---

Telephone 619-421-4208  
Fax 619-421-4208

We urge you to communicate to the FCC that its mandate is to promulgate leased access regulations that effectuate a genuine outlet for independent programmers.

Thank you for your consideration and assistance in this urgent matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Posadas', enclosed within a large, hand-drawn oval.

Robert F. Posadas  
K61GH-LP, San Diego

FCC Licensee  
K61GH-LP, San Diego  
387 Canyon Ridge Drive  
Bonita CA 91802

Telephone 619-421-4208  
Fax 619-421-4208

The Honorable Randy Cunningham  
U.S. House of Representatives  
227 Canon House Office Building  
Washington, D.C. 20515

November 27, 1996

Dear Representative Cunningham:

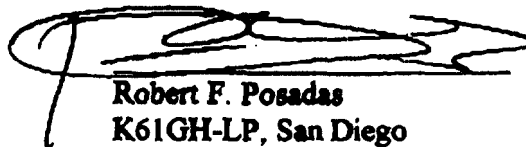
As the owner/operator/manager of an independent community television station, I am very angry about the Federal Communications Commission's four-year delay in implementing the leased access provisions of the 1992 Cable Act. These laws were intended to ensure that small stations like ours, who are not financially affiliated with the enormous cable companies that control cable system access, would have reasonable opportunities for local cable system carriage. The FCC's lengthy delay in implementing Congress' mandate has been extraordinarily harmful to programmers and producers like myself, as well as to the audiences we are trying to serve.

The 1992 leased access provisions - which notably were not repealed in the 1996 Telecommunications Act - were one of Congress' many responses to the increased concentration among cable system operators and the increased vertical integration between system operators and programmers. Having witnessed excessive cable company discrimination against programmers that did not have industry financial participation, Congress directed the FCC to develop regulations that would provide a realistic opportunity for unaffiliated programmers to crack the industry oligopoly and gain access to the viewing public. Unfortunately, in four years the FCC has yet to effectively implement Congress' mandate, while in the interim the integrated cable companies are charging outrageous rates for access when they are providing it at all.

Please let me know who in your office will assist in persuading the FCC to follow Congress' instructions on this issue. I will be calling you soon to follow up.

Thank you for your consideration and urgent assistance.

Sincerely,



Robert F. Posadas  
K61GH-LP, San Diego

FCC Licensee  
K61GH-LP, San Diego  
397 Canyon Ridge Drive  
Bonita CA 91902

Telephone 619-421-4208  
Fax 619-421-4208

The Honorable Brian Bilbray  
U.S. House of Representatives  
1004 Longworth House Office Building  
Washington, D.C. 20515

November 27, 1996

Dear Representative Bilbray:

As the owner/operator/manager of an independent community television station, I am very angry about the Federal Communications Commission's four-year delay in implementing the leased access provisions of the 1992 Cable Act. These laws were intended to ensure that small stations like ours, who are not financially affiliated with the enormous cable companies that control cable system access, would have reasonable opportunities for local cable system carriage. The FCC's lengthy delay in implementing Congress' mandate has been extraordinarily harmful to programmers and producers like myself, as well as to the audiences we are trying to serve.

The 1992 leased access provisions - which notably were not repealed in the 1996 Telecommunications Act - were one of Congress' many responses to the increased concentration among cable system operators and the increased vertical integration between system operators and programmers. Having witnessed excessive cable company discrimination against programmers that did not have industry financial participation, Congress directed the FCC to develop regulations that would provide a realistic opportunity for unaffiliated programmers to crack the industry oligopoly and gain access to the viewing public. Unfortunately, in four years the FCC has yet to effectively implement Congress' mandate, while in the interim the integrated cable companies are charging outrageous rates for access when they are providing it at all.

Please let me know who in your office will assist in persuading the FCC to follow Congress' instructions on this issue. I will be calling you soon to follow up.

Thank you for your consideration and urgent assistance.

Sincerely,

  
Robert F. Posadas  
K61GH-LP, San Diego

FCC Licensee  
K61GH-LP, San Diego  
397 Canyon Ridge Drive  
Bonita CA 91902

Telephone 619-421-4208  
Fax 619-421-4208

The Honorable Barbara Boxer  
U.S. Senate  
112 Hart Senate Office Building  
Washington, D.C. 20510

November 27, 1996

Dear Senator Boxer:

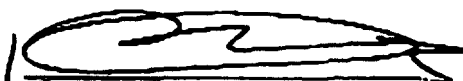
As the owner/operator/manager of an independent community television station, I am very angry about the Federal Communications Commission's four-year delay in implementing the leased access provisions of the 1992 Cable Act. These laws were intended to ensure that small stations like ours, who are not financially affiliated with the enormous cable companies that control cable system access, would have reasonable opportunities for local cable system carriage. The FCC's lengthy delay in implementing Congress' mandate has been extraordinarily harmful to programmers and producers like myself, as well as to the audiences we are trying to serve.

The 1992 leased access provisions - which notably were not repealed in the 1996 Telecommunications Act - were one of Congress' many responses to the increased concentration among cable system operators and the increased vertical integration between system operators and programmers. Having witnessed excessive cable company discrimination against programmers that did not have industry financial participation, Congress directed the FCC to develop regulations that would provide a realistic opportunity for unaffiliated programmers to crack the industry oligopoly and gain access to the viewing public. Unfortunately, in four years the FCC has yet to effectively implement Congress' mandate, while in the interim the integrated cable companies are charging outrageous rates for access when they are providing it at all.

Please let me know who in your office will assist in persuading the FCC to follow Congress' instructions on this issue. I will be calling you soon to follow up.

Thank you for your consideration and urgent assistance.

Sincerely,



Robert F. Posadas  
K61GH-LP, San Diego



FCC Licensee  
K61GH-LP, San Diego  
397 Canyon Ridge Drive  
Bonita CA 91802

Telephone 619-421-4208  
Fax 619-421-4208

The Honorable Diane Feinstein  
U.S. Senate  
331 Hart Senate Office Building  
Washington, D.C. 20510

November 27, 1996

Dear Senator Feinstein:

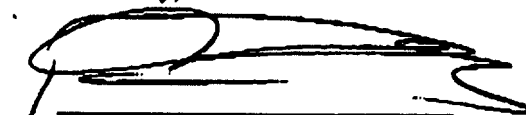
As the owner/operator/manager of an independent community television station, I am very angry about the Federal Communications Commission's four-year delay in implementing the leased access provisions of the 1992 Cable Act. These laws were intended to ensure that small stations like ours, who are not financially affiliated with the enormous cable companies that control cable system access, would have reasonable opportunities for local cable system carriage. The FCC's lengthy delay in implementing Congress' mandate has been extraordinarily harmful to programmers and producers like myself, as well as to the audiences we are trying to serve.

The 1992 leased access provisions - which notably were not repealed in the 1996 Telecommunications Act - were one of Congress' many responses to the increased concentration among cable system operators and the increased vertical integration between system operators and programmers. Having witnessed excessive cable company discrimination against programmers that did not have industry financial participation, Congress directed the FCC to develop regulations that would provide a realistic opportunity for unaffiliated programmers to crack the industry oligopoly and gain access to the viewing public. Unfortunately, in four years the FCC has yet to effectively implement Congress' mandate, while in the interim the integrated cable companies are charging outrageous rates for access when they are providing it at all.

Please let me know who in your office will assist in persuading the FCC to follow Congress' instructions on this issue. I will be calling you soon to follow up.

Thank you for your consideration and urgent assistance.

Sincerely,



Robert F. Posadas  
K61GH-LP, San Diego

FCC Licensee  
K61GH-LP, San Diego  
397 Canyon Ridge Drive  
Bonita CA 91902

Telephone 619-421-4208  
Fax 619-421-4208

The Honorable AL Gore  
Vice President  
Old Executive Office Building  
Washington, D.C. 20501

November 27, 1996

Dear Mr. Vice President:

Four years ago, as a member of the United States Senate, you led the victorious effort to enact the Cable Television Consumer Protection and Competition Act of 1992. Ever since, hundreds of independent television programmers have anxiously anticipated implementation of the Act's leased access provisions, which were intended to ensure that the vertically and horizontally integrated cable television operators, could not exploit their controlling position to prevent competitive programmers from their only opportunity to reach the viewing public.

Unfortunately, the Federal Communications Commission's implementation and oversight of leased access has been shameful, and the cable companies treat leased access programmers worse today that they did when the Act was passed. In part this is a result of the FCC's inept regulations in this area, which exacerbated the problems rather than reducing them. Now, for example, most cable systems charge higher prices for leased access than before the FCC's regulations were approved. In San Diego, Cox Cable can provide leased access for approximately \$ 40,000 per month way out of reach of independent community programmers like ourselves. Not to mention that Cox Cable has increased cable rates last November 15, 1996 and Southwestern Cable followed suit.

Mr. Vice President, this Administration cannot continue to permit the information highway to develop in a manner that benefits only those who own the road. The current leased access system is useless to consumers and damaging to independent community programmers like ourselves, all of whom you have worked so hard to help.

Thank you for your consideration and urgent assistance in this matter.

Sincerely,

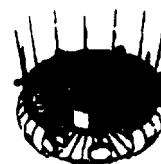


Robert F. Posadas  
K61GH-LP, San Diego



## LANDMARK BROADCASTING KATA TV-60

DALLAS - MESQUITE "TELEVISION FOR THE FAMILY"



100 COVELO AVENUE P.O. BOX 7497 • FORT WORTH, TEXAS 76111 • 817 335 8666 • 800 438 6244 • FAX 817 335 2171

Senator Phil Gramm  
U.S. Senate  
370 Russell Senate Office  
Washington, D.C. 20510

November 27, 1996

Dear Senator Gramm:

Congratulations on your re-election! We have appreciated your response to the various issues Low Power Television (KATA TV-60 Dallas, Mesquite) owners in Texas are confronted with. Well, here's another issue we need your help with.

The Federal Communications Commission has delayed implementing the leased access provisions of the 1992 Cable Act. These laws were intended to ensure that, people like us, who are not financially affiliated with the enormous cable companies that control cable system access, would have reasonable opportunities for local cable system carriage. Just this past week we had a potentially hazardous event at one of the local high schools, all the major networks gave the incident a little more than 2 minutes on their evening news programs. We were on the site broadcasting in-depth updates until the situation was secured. Fifty per cent of the residents were unable to take advantage of our updates because the cable company (FCD) refuses to recognize us and or negotiate in a reasonable manner. The rates they posed to us exceeded our revenues. The FCC's lengthy delay in implementing Congress's mandate has been extraordinarily harmful to TV producers like us, as well as, the audiences we are trying to serve.

The 1992 leased access provisions, which notably were not repealed in the 1996 Telecommunications Act, were one of Congress's many responses to the increased concentration among cable system operators and the increased vertical integration between system operators and programmers. We have witnessed excessive cable discrimination against programmers that did not have industry financial participation. Congress directed the FCC to develop regulations that would provide a realistic opportunity for unaffiliated programmers to crack the industry oligopoly and gain access to the viewing public. Unfortunately, in four years the FCC has yet to effectively implement Congress's mandate. In the interim the integrated cable companies are charging outrageous rates for access when they are providing it at all.

We will be contacting Mr. Steve McMillan of your office to follow up on your response to the FCC. Thank you again for representing the fine people of the Great State of Texas.

Sincerely,

Henry J McGinnis, P.E.  
Owner KATA TV-60 - Dallas, Mesquite

NOV-27-1996 13:44

IPP

2023932653 P.02/06



GEORGETOWN UNIVERSITY LAW CENTER  
INSTITUTE FOR PUBLIC REPRESENTATION

Douglass L. Parker  
Director  
Hops Babcock  
Associate Director  
Environmental Law Project  
Angela J. Campbell  
Associate Director  
Citizens Communications Center Project  
John O. Pedersen  
Visiting Scholar  
Lori Anne Desqueuse  
Karen M. Edwards  
Lisel Ley  
Alma L. Lowry  
Fellow

November 27, 1996

The Honorable Reed E. Hundt  
Chairman  
Federal Communications Commission  
1919 M Street, NW  
Washington, D.C. 20554

Re: Implementation of Sections of the Cable Television  
Consumer Protection and Competition Act of 1992: Leased  
Commercial Access, CS Docket No. 96-80.

Dear Chairman Hundt,

As the Commission considers how to set maximum rates for leased access programming on cable, CME, at al. thought it would be helpful to update the record to include information about the recent dispute in New York City between Rupert Murdoch's Fox News and Time-Warner Cable. The facts of that dispute and the decision of the United States District Court in Time Warner Cable of New York City v City of New York, 1996 W.L. 641032 (S.D.N.Y.) ("Time Warner Cable"), clearly indicate the urgent need for the Commission to set reasonable rates that will make leased access a genuine outlet for unaffiliated programmers.

I. Leased Access Is The Preferred Solution For Situations Like New York, and The FCC Should Make It Work.

In New York City, Murdoch seeks carriage of a 24-hour news channel on Time Warner's cable systems. Time Warner, which owns a competing 24-hour news channel, has refused carriage. Judge Cote's opinion clearly states that, through leased access, Congress "provided a remedy for this

NOV-27-1996 13:45

1PP

0026623634 P.03/06

situation -- where a cable operator refuses to carry a programmer for whatever reason -- by ensuring that a rejected programmer may lease access on the cable system, without permission from the cable operator." *Id.* at \*27.

The most important reason this remedy is not working is that leased access rates have never been set at a reasonable level. Thus, leased access has not become a viable avenue, not only for non-profit programmers, but even for industry giants like Murdoch.

Another reason that leased access has not worked in this particular situation is that the city offered Murdoch the alternative of carriage on PEG channels. The court found that this scheme violated "the entire scheme of the Cable Act [which] creates three distinct types of programming: that chosen by the cable operator, that leased by other programmers, and PEG use." (*Id.* at \*29). The court issued an injunction, saying that "New York City cannot make an end-run around the congressional determination that leased access is the solution to this type of situation." *Id.* at \*28.

We urge that the Commission not make a similar end-run around Congressional intent by setting leased access rates that are too high. Congress made it clear in 1984 and again in 1992 that, as Judge Cote notes, "potential misuse of 'bottleneck' market power" (*id.* at 43) by operators could keep unaffiliated programming sources off cable systems. Congress directed the Commission to prevent this abuse of bottleneck power. By setting reasonable rates, the Commission can fulfill the stated purpose of leased access, to "assure that the widest possible diversity of information sources are made available to the public." 47 U.S.C. §532(a).

**II. Cable Operators Do Not Have A Pre-Existing Right To The Leased Access Channels, and Thus Any Loss Of Use Of Channels That May Result From Increased Leased Access Demand Is Legally Negligible.**

The Time Warner Cable decision is also relevant to the question of whether cable operators will suffer economic harm from increased use of leased access. The existence of any such harm depends on the baseline from which harm is measured. The decision leads to the conclusion that the baseline economic condition from which harm to the operator is measured must exclude the value of programming currently placed on dormant leased access channels.

With both leased access and PEG, operators are allowed to place programming on leased access or PEG channels which are not being utilized. (See H.R.Rep. No. 98-549, at 47, and 47 U.S.C. §532.) With PEG at issue in Time Warner Cable, Time Warner

NOV-27-1996 13:46

[P0]

2023932553 P.04/06

argued that this provision gave them "an underlying right to all [PEG] channels." Time Warner Cable, at \*37. The court disagreed. It stated that

[t]he best reading of the statutory framework is that the answer to who owned the channels first is neither party -- the rights to the channels were created simultaneously at the time the franchise agreements were signed. Id. at \*38.

Thus, Time Warner had no pre-existing rights to the PEG channels. We believe this decision was absolutely correct. Judge Cote properly defended PEG channels against their usurpation for non-PEG purposes, even by the franchise authority.

By Judge Cote's reasoning, if the FCC sets leased access rates that are too high, it will in effect be allowing cable operators to continue their usurpation of leased access channels for non-leased access purposes. Conversely, reasonable rates similar to the formula proposed in the March 1996 FNPRM would not result in economic harm to the cable operator. Rather, such rates would simply stop the usurpation.

For just as with PEG, it is clear that the operator does not have pre-existing rights in leased access channels. The best answer here to the question of "who owned the channels first" (id. at \*38) is that, since 1984 when statutorily defined leased access channels were created, a certain percentage of every cable system has been dedicated to this purpose and is beyond the full ownership of the operator.

Congress found in 1984 that this leased access set aside did not economically harm the operators to a great degree, since the operator can still "provide information in which it has a financial or proprietary interest on the vast majority of its channels." (H.R.Rept. No. 98-549, at 33).

If operators were not harmed by setting aside the leased access channels in 1984, and if they do not have a true ownership interest in these channels, then all the profits they have derived from underused leased access channels since 1984 have been a windfall to the operators. Adopting reasonable rates which allow demand for leased access to increase will not cause economic harm to operators. At most, it will decrease their post-1984 windfall profits.

### III. Court Findings Indicate That The Economics of Leased Access Can Work

Several key findings and statements by the United States District Court go directly contrary to the oft-heard industry argument that the economics of leased access cannot work. While

NOV-27-1996 13:08

IPP

2026639534 P.05 06

the industry claims that programming businesses are only viable when money flows from the operator to the programmer, the opinion in this case suggests that this claim is wrong.

First, there are "reverse flow" programmers already operating. That is, not all programmers receive payments from operators; some reverse the flow and have the programmer pay the operator. Judge Cote described the standard programmer-operator financial arrangement, but then pointed out that "[n]ot all [programmers] operate this way: some do not sell advertising ... and some do not charge on a per subscriber, per month basis (such as the TV Food Network)." (Time Warner Cable at \*4). There is no reason the numbers of "reverse flow" programmers cannot be expanded through leased access.

Second, a viable leased access alternative would change the entire bargaining relationship, and programmers would have direct incentives to use leased access.

In the New York situation, the Judge explicitly found that Fox News was planning to use its PEG access to the cable systems as a bargaining tool to gain access on system-programmed channels. Id. at \*41. The strategy, as described by the court, was that "by playing on the [PEG] channels, Fox News will build viewer loyalty and, when it threatens to leave [PEG] due to the absence of advertiser revenue ... it will leave Time Warner with the choice of carrying Fox News on its commercial channels or angering viewers." Id. Thus "Fox hope[s] and expect[s] that access to the New York market ... will win for them the opportunity to run on commercial channels in the near future." Id. at \*33.

While that strategy is a deplorable misuse of PEG, a for-profit entity could use leased access as a foothold to build name recognition and market share. It could thus demonstrate its economic value to the cable operator before seeking carriage on system-programmed channels. A business could look at leased access lease payments as a long-term investment with significant hope of payoff -- so long as the FCC sets reasonable rates. And allowing leased access programmers to demonstrate their economic viability to the cable operator does not raise the coercive First Amendment problems Judge Cote identified with New York's mis-use of PEG. See Time Warner v. FCC, 1996 WL 491803 (D.C. Cir.).

Similarly, a non-profit programmer could benefit from leased access carriage. We have argued in our Comments, Reply Comments, and in an Ex Parte letter that non-profit programmers should have a portion of leased access capacity set aside for them. As the non-profit programming proved to be a source of positive value to the system through the audience it brings in, the operator and the programmer might later negotiate a more traditional carriage package on system-programmed channels.

NOV-27-1995 15:47

IPK

2023529634 P.05/06

This strategy would accomplish exactly what Congress hoped to achieve through leased access. Programmers who do not initially find favor with the cable operator would be able to obtain carriage, and thus viewers would be served by a wider diversity of programming sources. The bottleneck that Congress so feared would be forced to open up a little bit more. The public would benefit.

Of course, this strategy can only work if the rates are significantly lower than the unreasonable rates operators have previously charged.

#### IV. Conclusion

For the foregoing reasons, we urge the Commission to set leased access rates, for both non-profit and for-profit programmers, that are reasonable and much lower than current rates.

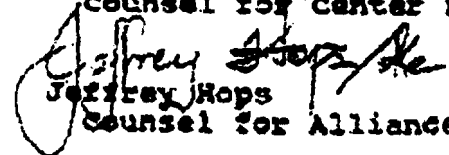
Sincerely,



John Podesta

Angela Campbell

Counsel for Center for Media Education



Jeffrey Hops

Counsel for Alliance for Community Media

CC: Susan Ness  
James H. Quallio  
Rachelle B. Chong  
William Kennard  
Meredith Jones





449 Broadway, 3rd Floor, New York, NY 10013 • (212) 966-5660 • Fax: (212) 966-5725 • <http://www.hitn.org>

December 5, 1996

VIA FACSIMILE (202) 224-0406

The Honorable Senator Daniel Moynihan  
US Senate  
464 Russell Senate Office Building  
Washington, DC 20510

Dear Senator Moynihan:

As the owner of an independent public television station, I am very angry about the Federal Communications Commission's four year delay in implementing the leased access provisions of the 1992 Cable Act. These laws were intended to ensure that small stations like mine, who are not financially affiliated with the enormous cable companies that control cable system access, would have reasonable opportunities for local cable system carriage. The FCC's lengthy delay in implementing Congress's mandate has been extraordinarily harmful to programmers like me, as well as to the audiences we are trying to serve in the New York State area.

The 1992 leased access provisions -- which notably were not repealed in the 1996 Telecommunications Act -- were one of Congress's many responses to the increased concentration among cable system operators and the increased vertical integration between system operators and programmers. Having witnessed excessive cable company discrimination against programmers that did not have industry financial participation, Congress directed the FCC to develop regulations that would provide a realistic opportunity for unaffiliated programmers to crack the industry oligopoly and gain access to the viewing public. Unfortunately, in four years the FCC has yet to effectively implement Congress's mandate, while in the interim the integrated cable companies are charging outrageous rates for access when they are providing it at all.

Please let me know who in your office will assist in persuading the FCC to follow Congress's instructions on this issue. I will be telephoning soon to follow up.

Thank you for your consideration.

Sincerely,

  
Jose Luis Rodriguez  
President

NS/yt

C:\OFFICE\WPWIN\WP\X\SYIL\DA\LETTERS\ADAMATO.WPD